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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME NELSON REYES,

Defendant and Appellant.

G056854

(Super. Ct. No. 14CF3955)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Lance Jensen, Judge. Affirmed in part, reversed in part, modified and remanded.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, Steve Oetting and Kristen Ramirez, Deputy Attorneys General, for Plaintiff and Respondent.

THE COURT:^{*}

A jury convicted defendant Jaime Nelson Reyes of attempted murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a))¹ and several other crimes and enhancements. In the appeal from the judgment, we affirmed in part, reversed in part, and remanded for resentencing. (*People v. Reyes* (March 28, 2018, G053096 [nonpub. opn.] (*Reyes I.*))

Defendant contends, and the Attorney General concedes, that the trial court committed three errors in the resentencing process on remand. We agree. The resentencing order addressed the major issue identified in *Reyes I* — the court exercised its discretion under § 12022.53, subd. (h) to strike a twenty-year consecutive term enhancement previously imposed. But the court neglected to address three other points.

First, the court failed to select a term for defendant’s kidnapping conviction. We noted in *Reyes I*: “The trial court imposed an unauthorized sentence by staying sentencing (§ 654) for kidnapping (§ 207, subd. (a) [count 3]) without imposing a term. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1467; § 208 [kidnapping is punishable by imprisonment for ‘three, five, or eight years’].) The court can correct this error on remand.” Despite this analysis in *Reyes I*, the parties’ sentencing briefs on remand did not mention this issue and it was ignored at the sentencing hearing.

Second, the court (with the approval of trial counsel) failed to recalculate credits, concluding that credits would “stay the same.” But “when a prison term already in progress is modified as the result of an appellate sentence remand, the sentencing court must recalculate and credit against the modified sentence *all actual time* the defendant has already served, whether in jail or prison, and whether before or since he was

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Before Aronson, Acting P.J., Fybel, J., and Ikola, J.

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All further statutory references are to the Penal Code.

originally committed and delivered to prison custody.” (*People v. Buckhalter* (2001) 26 Cal.4th 20, 29.) “[T]he trial court, having modified defendant’s sentence, should have determined all actual days defendant had spent in custody, whether in jail or prison, and awarded such credits in the new abstract of judgment.” (*Id.* at p. 41.)

Third and finally, the abstract of judgment erroneously describes the enhancement to count 1, attempted murder, as “664(a) PC.” The enhancement should be identified as one under section 12022.53, subdivision (b).

DISPOSITION

The postjudgment resentencing order is reversed in part. The matter is remanded for further proceedings. The court shall: (1) select a term for defendant’s kidnapping conviction; (2) recalculate credits; and (3) amend the abstract of judgment consistent with this opinion and additional orders made on remand. The postjudgment resentencing order is affirmed in all other respects.